



**UNITED STATES OF AMERICA
DEPARTMENT OF TRANSPORTATION
OFFICE OF THE SECRETARY
WASHINGTON, D.C.**

Issued by the Department of Transportation
on the 22nd day of February, 1999

Application of

SOCIETE AIR FRANCE

for an exemption from Subparts K and S of Part 93
of Title 14, Code of Federal Regulations pursuant
to 49 U.S.C. § 41714(b)(1)

Docket OST-98-4824

ORDER GRANTING EXEMPTION

APPLICATION

On December 1, 1998, Societe Air France (Air France) requested an exemption from 14 C.F.R. Part 93, Subparts K and S, under 49 U.S.C. § 41714(b)(1), to the extent necessary to enable it to introduce a new daily nonstop, round-trip flight between Paris, France and Chicago, Illinois (O'Hare International Airport), using Boeing B-767 equipment (a Stage 3 aircraft). Air France requests two slot exemptions to accommodate an O'Hare arrival at 11:25 A.M. and an O'Hare departure at 4:45 P.M. Air France hopes to commence these operations on or about March 28, 1999, and continue them through the 1999 summer season.¹

In support of its request, Air France states that it had made a timely request for the additional slots with the Federal Aviation Administration (FAA) on October 13, 1998, for the 1999 summer season, but at the IATA slot conference in November 1998 the FAA informally notified the carrier that Air France's request, along with those of other carriers, exceeded the number of slots that FAA could allocate and was likely to be denied. Air France currently provides one daily round trip flight between Paris and Chicago (O'Hare) during slot-controlled hours. Air France contends that grant of the requested slot exemptions would provide additional competition and significant new service and connecting opportunities in the Paris-Chicago market, particularly given Air France's hub at Charles de Gaulle Airport. Air France argues that grant of its application is fully consistent with the objectives of the U.S.-France Air Transport Services Agreement. Air France also asserts that its application is similar to other slot exemption requests that have been granted by the Department. Finally, Air France contends that U.S. air carriers have recently been allowed to increase Paris-Chicago service to 21 frequencies per week effective April 1, 1999, while Air France as the only French carrier has been restricted to seven frequencies per week.

¹

The summer season begins April 4, 1999 and ends October 30, 1999.

RESPONSIVE PLEADINGS

On January 20, 1999 the City of Chicago filed a motion for leave to file and a consolidated answer in support of the Air France application and other foreign air carrier slot exemption applications at O'Hare.²

STATUTORY BACKGROUND

Subparts K and S of 14 C.F.R. Part 93 designate Chicago's O'Hare International Airport, New York's John F. Kennedy International and LaGuardia Airports, and Ronald Reagan Washington National Airport as high density traffic airports and prescribe certain air traffic rules for the operation of aircraft at these airports. These regulations limit the number of allocated Instrument Flight Rule (IFR) operations (takeoffs and landings) for specified classes of users during certain periods of the day.

Pursuant to 49 U.S.C. § 41714(b)(1), the Secretary of Transportation may, by order, grant exemptions from the requirements of Subparts K and S of 14 C.F.R. Part 93 (pertaining to slots at high density airports other than National), to enable air carriers and foreign air carriers to provide foreign air transportation using Stage 3 aircraft, if he finds such action to be in the public interest.

DECISION

We will grant Air France an exemption to enable it to perform one daily Paris (Charles de Gaulle)-Chicago scheduled flight arrival and one daily departure at O'Hare during the 1999 summer season.³ We find that grant of this exemption authority is consistent with the public interest.

Grant of this application will provide additional competitive service in the Paris-Chicago market, and will expand capacity and broaden the range of travel times available to passengers between Chicago and Paris and beyond Paris and Chicago. Grant of this application is also consistent with the objectives of the bilateral air services agreements between the U.S. and France which contemplate access to the market for carriers of either nation.

In reaching our decision, we recognize that Air France filed a timely request with the FAA for these additional slots, and that due to hourly constraints the FAA has not been able to accommodate the applicant's request within the requested time frame. Moreover, we note that aviation relations with Air France are governed by the U.S.-France Air Transport Services Agreement, which provides for the proposed Paris-Chicago service, and that Air France has been

² American Airlines, Inc. (American) filed an answer, supported by US Airways, opposing the Air France application. American subsequently filed a motion for leave to withdraw its opposition which we will grant. Prior to that motion, American and Air France had filed a series of motions for leave to file which are now moot.

³ Air France has requested that its exemption authority commence on March 28, 1999, rather than the April 4, 1999, summer season commencement date as defined by the Federal Aviation Regulations. March 28, 1999, is the beginning date of the Northern summer season as determined by the International Air Transport Association (IATA). We have consulted with FAA staff and determined that the inauguration of Air France's service on the earlier date would not present operational concerns.

properly authorized by its government to provide scheduled foreign air transportation in the Paris-Chicago market.⁴

As we have affirmed,⁵ while 49 U.S.C. § 41714(b)(1) provides the Department with discretionary authority to grant slot exemptions for foreign air transportation at a high density airport, we do not view this authority as a substitute mechanism for the slot-allocation procedures outlined in Subpart S of 14 C.F.R. Part 93. We fully expect air carriers and foreign air carriers to follow and exhaust all appropriate procedures for slot acquisition before filing a slot exemption request with the Department. In this case, Air France followed those slot-allocation procedures.

Since grant of this exemption authority is dependent upon the applicant's existing U.S.- France operating authority, we attach the condition that this exemption authority may be used only in the provision of Air France's scheduled service between Paris Charles de Gaulle and Chicago O'Hare. Furthermore, in accordance with the requirements of the statute, all aircraft operations performed under this exemption shall be conducted by Stage 3 aircraft. We also note that grant of this exemption provides Air France with only a temporary slot allocation at O'Hare Airport and does not confer on the applicant any ability to sell, trade, transfer, or convey the authority.

This Order is issued under authority delegated in 49 C.F.R. 1.56a(f)(l).

ACCORDINGLY,

1. The Department grants a temporary exemption from 14 C.F.R. Part 93, Subparts K and S under 49 U.S.C. 41714(b)(1) to Societe Air France to the extent necessary to enable it to operate one daily scheduled arrival at Chicago's O'Hare International Airport between 11:15 A.M. and 11:44 A.M. (local time) and one daily scheduled departure at Chicago's O'Hare International Airport between 4:45 P.M. and 5:14 P.M. (local time) in a pattern to be determined in consultation between Societe Air France and the Slot Administration Office, FAA;
2. As a condition of approval, Societe Air France may use this exemption authority only to provide scheduled service between Paris, France (Charles De Gaulle International Airport) and the terminal point Chicago, Illinois (O'Hare International Airport);
3. As a further condition of approval, the Department directs that all aircraft operations granted under this exemption must be provided by Stage 3 aircraft;
4. The authority granted under this exemption is subject to all of the other requirements delineated in 14 C.F.R. Part 93, Subparts K and S;
5. We direct Societe Air France to contact the Federal Aviation Administration's Slot Administration Office in order to determine the start-up date in consultation with that Office for the exemption authority granted here. The Federal Aviation Administration will assign slot withdrawal numbers for the slot exemption times listed in ordering paragraph 1;

⁴ While our findings in this matter will allow for the improvement of services in the Paris-Chicago market, we emphasize that airline requests for exemption authority will be decided by the Department on a case-by-case basis.

⁵ See Orders 98-6-8 at 3 and 98-8-26 at 3.

6. The temporary slot allocation provided for in ordering paragraph 1 above is effective commencing on March 28, 1999, and expires on October 30, 1999;

7. We will serve this order on the Ambassador of France in Washington, D.C.; the City of Chicago; Societe Air France, the Department of State (Office of Aviation Negotiations); and all other parties served with the application; and

8. We grant all motions to file otherwise unauthorized documents.

By:

CHARLES A. HUNNICUTT
Assistant Secretary for Aviation
and International Affairs

(SEAL)

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